

The provisions of ch. 150, Stats. 1898, governing civil contempts, warrant the imposition of a fine or imprisonment, or both, in cases where no actual loss or injury is shown; and when a fine is so imposed it is in the nature of a penalty, and is to be paid into the state treasury to the credit of the school fund. *Emerson v. Huss*, 127 W 215, 106 NW 518.

Costs are recoverable in a case brought to obtain an injunction and punish for contempt for violation thereof, although no actual loss or injury to plaintiff was shown. *My Laundry Co. v. Schmeling*, 129 W 597, 109 NW 540.

In an action for the partition of personal property, where defendant refused to comply with an order turning over such property, he was not aggrieved by the entry of a judgment against him rather than an award in contempt proceedings under sec. 3490, Stats. 1898, where the amount recoverable in contempt proceedings would have been larger than the judgment. *Laing v. Williams*, 135 W 253, 115 NW 821.

A sentence requiring payment of indemnification, attorney's fees and costs was proper in case of a violation of an injunction prohibiting picketing. *Upper Lakes Shipping v. Seafarers' I. Union*, 23 W (2d) 494, 128 NW (2d) 73.

Contempt proceedings may be terminated by a separate judgment. The proceedings can be commenced by affidavit and order to show cause without a summons and may include persons not parties to the original judgment. *Novo Industrial Corp. v. Nissen*, 30 W (2d) 123, 140 NW (2d) 280.

**295.15 History:** R. S. 1849 c. 115 s. 23, 24; R. S. 1858 c. 149 s. 23, 24; R. S. 1878 s. 3491; Stats. 1898 s. 3491; 1925 c. 4; Stats. 1925 s. 295.15.

Secs. 23 and 24, ch. 149, R. S. 1858, applies only to cases in which the misconduct complained of consists in the omission to perform some act or duty which it is yet in the power of the defendant to perform. *Poertner v. Russel*, 33 W 193. See also *Heymann v. Cunningham*, 51 W 506, 8 NW 401.

Where the misconduct complained of consists of an omission to perform an act or duty which is within the power of the defendant to perform, she may be committed until she performs such act or duty irrespective of whether or not she is adjudged to pay a fine. *Dovi v. House*, 245 W 59, 13 NW (2d) 590.

Provisions in a contempt judgment imposing imprisonment for 30 days without qualification for failure to make payments or submit records as directed, are modified, since it appears that the contemnor had it within his power to perform those parts of the enforcement judgment, and the court should have ordered any imprisonment for these failures only until the contemnor performed the required acts or duties. *Wisconsin E. R. Board v. Mews*, 29 W (2d) 44, 138 NW (2d) 147.

**295.16 History:** R. S. 1849 c. 115 s. 25; R. S. 1858 c. 149 s. 25; R. S. 1878 s. 3492; Stats. 1898 s. 3492; 1925 c. 4; Stats. 1925 s. 295.16.

An order directing imprisonment until the person in contempt makes discovery of his property by doing a specified act "or until

the further order of the court" is not indefinite. In *re Rosenberg*, 90 W 581, 63 NW 1065, 64 NW 299.

Where a fine is imposed the order may provide for imprisonment until payment of such fine be made. *Schlitz Brew. Co. v. Washburn Brew. Asso.* 122 W 515, 100 NW 832.

A sentence of 30 days for failure to discharge an employe without affording the contemnor opportunity to purge himself on that count was warranted, where it appeared that as a result of such defiance rights had been adversely affected. *Wisconsin E. R. Board v. Mews*, 29 W (2d) 44, 138 NW (2d) 147.

**295.17 History:** R. S. 1849 c. 115 s. 26; R. S. 1858 c. 149 s. 26; R. S. 1878 s. 3493; Stats. 1898 s. 3493; 1925 c. 4; Stats. 1925 s. 295.17.

**295.18 History:** R. S. 1849 c. 115 s. 27; R. S. 1858 c. 149 s. 27; R. S. 1878 s. 3494; Stats. 1898 s. 3494; 1925 c. 4; Stats. 1925 s. 295.18.

**295.19 History:** R. S. 1849 c. 115 s. 28, 29; R. S. 1858 c. 149 s. 28, 29; R. S. 1878 s. 3495; Stats. 1898 s. 3495; 1925 c. 4; Stats. 1925 s. 295.19.

**295.20 History:** R. S. 1849 c. 115 s. 30, 31; R. S. 1858 c. 149 s. 30, 31; R. S. 1878 s. 3496; Stats. 1898 s. 3496; 1925 c. 4; Stats. 1925 s. 295.20.

**295.21 History:** R. S. 1849 c. 115 s. 32; R. S. 1858 c. 149 s. 32; R. S. 1878 s. 3497; Stats. 1898 s. 3497; 1925 c. 4; Stats. 1925 s. 295.21.

## CHAPTER 296.

### Disposition of Lands of Wards; Specific Performance; Change of Names; Establish Heirships.

**296.01 History:** R. S. 1849 c. 84 s. 40, 47; R. S. 1858 c. 96 s. 1, 24; R. S. 1878 s. 3498; Stats. 1898 s. 3498; 1925 c. 4; Stats. 1925 s. 296.01; 1929 c. 270 s. 2.

**Editor's Note:** Ch. 296 and related provisions of the statutes were thoroughly revised by ch. 270, Laws 1929. The bill was No. 188-S, and, by way of introduction, had a long note stating the general scope and purpose of the revision and pointed to the abuses sought to be prevented. That note was primarily an argument to the legislature in support of the bill and has accomplished its purpose. That note has little current value and is not printed in this volume. It is printed in *Wis. Annotations*, 1930, pp. 1376-7.

**296.02 History:** R. S. 1849 c. 84 s. 49, 72; R. S. 1858 c. 96 s. 3, 26; R. S. 1878 s. 3499; Stats. 1898 s. 3499; 1925 c. 4; Stats. 1925 s. 296.02; 1929 c. 270 s. 3; 1953 c. 440.

**Editor's Note:** 316.52, Stats. 1953, created by ch. 440, Laws 1953, superseded so much of 296.02, Stats. 1951, as empowered a circuit or county court to authorize or compel the specific performance of any contract made by any person who died before the performance thereof.

**296.03 History:** R. S. 1849 c. 84 s. 70, 71; R. S. 1858 c. 96 s. 2, 24, 25; R. S. 1878 s. 3500;

Stats. 1898 s. 3500; 1925 c. 4; Stats. 1925 s. 296.03; 1929 c. 270 s. 4; 1953 c. 440.

**296.04 History:** R. S. 1849 c. 74 s. 13; R. S. 1858 c. 105 s. 7 to 10, 13; R. S. 1878 s. 3501; Stats. 1898 s. 3501; 1925 c. 4; Stats. 1925 s. 296.04; 1929 c. 270 s. 5; 1953 c. 440.

**296.05 History:** R. S. 1849 c. 74 s. 11, 12; R. S. 1858 c. 105 s. 11, 12; R. S. 1878 s. 3502; Stats. 1898 s. 3502; 1925 c. 4; Stats. 1925 s. 296.05; 1929 c. 270 s. 6; 1953 c. 440.

**296.06 History:** R. S. 1849 c. 115 s. 50, 55; R. S. 1858 c. 96 s. 4, 9, 21; R. S. 1878 s. 3503; Stats. 1898 s. 3503; 1925 c. 4; Stats. 1925 s. 296.06; 1929 c. 270 s. 7.

Where a guardian satisfactorily accounted for surplus proceeds of sale and they went to the benefit of a ward, the sale was not declared void in a collateral action because the bond was not formally approved. *Emery v. Vroman*, 19 W 689.

The guardian's failure to explicitly set forth in her petition for approval of a contract of sale the statutory grounds therefor did not invalidate approval thereof where the court had previously been informed during the course of the incompetency proceeding of the guardian's economic position and the need to sell the property to maintain the ward and satisfy his debts. *Guardianship of Breault*, 22 W (2d) 114, 125 NW (2d) 397.

**296.07 History:** R. S. 1849 c. 84 s. 50; R. S. 1858 c. 96 s. 4; 1875 c. 77; 1878 c. 46; R. S. 1878 s. 3504; Stats. 1898 s. 3504; 1907 c. 660; 1925 c. 4; Stats. 1925 s. 296.07; 1929 c. 270 s. 8; 1945 c. 534.

The minor's mother was included in the term "next friend" in sec. 4, ch. 96, R. S. 1858. *McKinney v. Jones*, 55 W 39, 11 NW 606, 12 NW 381.

**296.08 History:** R. S. 1849 c. 84 s. 51 to 53; R. S. 1858 c. 96 s. 5 to 7; R. S. 1878 s. 3505; Stats. 1898 s. 3505; 1907 c. 660; 1911 c. 234; 1925 c. 4; Stats. 1925 s. 296.08; 1929 c. 270 s. 9; 1949 c. 301; 1951 c. 727.

**Comment of Advisory Committee, 1949:** The Committee can see no reason why 296.08 (1) (a) should not apply as well to the case of an incompetent who has no guardian as to a minor who has none. The statute seems to have been drawn upon the assumption that an incompetent has a guardian and that a minor has not. The truth is either may or may not have a general guardian. If the sale, lease or mortgage creates a need for a guardian, one will be appointed. [Bill 30-S]

Though a bond was not in compliance with the requirements of the statute, a sale made in good faith was not void for that reason. *McKinney v. Jones*, 55 W 39, 11 NW 606, 12 NW 381.

Under the sale of lands of an incompetent person, moneys derived by a general guardian from such a sale are in his hands for all purposes. An obligation on an additional bond, furnished in connection with the sale of the ward's real estate, is general so as to render the surety on such bond liable for the failure of the guardian to pay over all moneys in his hands derived from the sale and all moneys

due from him on final settlement. *Luce v. Fidelity & Cas. Co.* 222 W 50, 268 NW 131.

**296.09 History:** R. S. 1849 c. 84 s. 54, 55; R. S. 1858 c. 96 s. 8, 19; R. S. 1878 s. 3506; Stats. 1898 s. 3506; 1907 c. 660; 1925 c. 4; Stats. 1925 s. 296.09; 1929 c. 270 s. 10.

The court may satisfy itself by means of affidavits, inspection or other methods of proof without oral testimony. Where an order of sale is made it will be presumed that the court was satisfied as to the merits of the application. *Schafer v. Luke*, 51 W 669, 8 NW 857.

**296.10 History:** R. S. 1849 c. 84 s. 55, 66; R. S. 1858 c. 96 s. 9, 20; R. S. 1878 s. 3507; Stats. 1898 s. 3507; 1925 c. 4; Stats. 1925 s. 296.10; 1929 c. 270 s. 11; 1951 c. 705; 1953 c. 440.

Sale of more than was necessary does not affect the validity of a sale consummated before the specified sum was obtained. *Emery v. Vroman*, 19 W 689.

296.10 and 296.11 do not require the guardian of an incompetent to obtain permission to negotiate a sale of real estate in addition to court approval of a completed agreement, the focus of these statutes being on approval of a fully negotiated agreement, and the reasonableness thereof being the primary concern of the court. *Guardianship of Breault*, 22 W (2d) 114, 125 NW (2d) 397.

**296.11 History:** R. S. 1849 c. 84 s. 57, 59; R. S. 1858 c. 96 s. 11, 23; R. S. 1878 s. 3508; Stats. 1898 s. 3508; 1907 c. 660; 1925 c. 4; Stats. 1925 s. 296.11; 1929 c. 270 s. 12; 1949 c. 202.

A contract with a school district, by a special guardian, for the sale of an incompetent person's interest in lots desired for a school-house site for the consideration of \$100, should not be confirmed by the court where a substantially higher price can be obtained from a third party, even though the third party desires to make the purchase for the sole purpose of thwarting the school district and causing it expense, the interest of an incompetent person being the dominant consideration. *In re Anderson*, 176 W 459, 186 NW 1019.

Where the guardian had presented a fair and reasonable contract of sale of the ward's real estate to the court for approval, and the court had properly approved the contract as being fair and reasonable, a later higher offer was untimely, and it could not be accepted nor the prior valid contract set aside. (*In re Anderson*, 176 Wis. 459, distinguished.) *Guardianship of Breault*, 22 W (2d) 114, 125 NW (2d) 397.

**296.12 History:** 1901 c. 193 s. 1; Supl. 1906 s. 3508a; 1925 c. 4; Stats. 1925 s. 296.12; 1929 c. 270 s. 13; 1945 c. 402.

On the application of a married ward, the county court had power, under 296.12, Stats. 1945, to order, over objections of the guardian, the purchase of a house to enable the ward and his wife to move into the village, where the conditions of the statute were satisfied and the expenditure was not so out of proportion to the ward's means as to endanger his estate. *Guardianship of Perkins*, 249 W 486, 24 NW (2d) 897, 26 NW (2d) 34.

**296.13 History:** 1874 c. 96 s. 1; R. S. 1878 s. 3509; Stats. 1898 s. 3509; 1907 c. 660; 1925 c. 4; Stats. 1925 s. 296.13; 1929 c. 270 s. 14.

**296.14 History:** R. S. 1849 c. 84 s. 46; R. S. 1858 c. 96 s. 10; R. S. 1878 s. 3510; Stats. 1898 s. 3510; 1925 c. 4; Stats. 1925 s. 296.14; 1929 c. 270 s. 15.

**296.15 History:** R. S. 1849 c. 84 s. 58; R. S. 1858 c. 96 s. 12, 25; R. S. 1878 s. 3511; Stats. 1898 s. 3511; 1907 c. 660; 1925 c. 4; Stats. 1925 s. 296.15; 1929 c. 270 s. 16.

Formerly, until a special guardian's agreement to sell his ward's estate was confirmed, he could not convey, and a complaint which failed to allege such confirmation was defective. But the defect was cured by defendant's introducing in evidence a record showing such confirmation. *McKinney v. Jones*, 55 W 39, 11 NW 606, 12 NW 381.

**296.16 History:** R. S. 1849 c. 84 s. 60; R. S. 1858 c. 96 s. 14; R. S. 1878 s. 3512; Stats. 1898 s. 3512; 1925 c. 4; Stats. 1925 s. 296.16; 1929 c. 270 s. 17.

**296.17 History:** R. S. 1849 c. 84 s. 59; R. S. 1858 c. 96 s. 13, 22; R. S. 1878 s. 3513; Stats. 1898 s. 3513; 1925 c. 4; Stats. 1925 s. 296.17; 1929 c. 270 s. 18.

**296.18 History:** R. S. 1849 c. 84 s. 62, 63; R. S. 1858 c. 96 s. 15, 16; R. S. 1878 s. 3514; Stats. 1898 s. 3514; 1907 c. 660; 1925 c. 4; Stats. 1925 s. 296.18; 1929 c. 270 s. 19.

**296.19 History:** R. S. 1878 s. 3515; Stats. 1898 s. 3515; 1907 c. 660; 1925 c. 4; Stats. 1925 s. 296.19; 1929 c. 270 s. 20.

**Revisers' Note, 1878:** Is new, and intended to provide that an infant or incompetent person having an estate less than a fee may join with the owner of the fee in a sale of the whole estate, and making provision for ascertaining and investing the part of the proceeds justly belonging to such infant or incompetent person.

There would be no breach of duty of the guardian until the order is made and not complied with. *Evison v. Hallock*, 108 W 249, 83 NW 1102.

**296.20 History:** R. S. 1858 c. 96 s. 13; R. S. 1878 s. 3516; Stats. 1898 s. 3516; 1907 c. 660; 1925 c. 4; Stats. 1925 s. 296.20; 1929 c. 270 s. 21.

**296.21 History:** R. S. 1849 c. 84 s. 73; R. S. 1858 c. 96 s. 27; R. S. 1878 s. 3517; Stats. 1898 s. 3517; 1925 c. 4; Stats. 1925 s. 296.21; 1929 c. 270 s. 22.

**296.25 History:** 1903 c. 125 s. 1; Supl. 1906 s. 3519b; 1907 c. 660; 1925 c. 4; Stats. 1925 s. 296.25; 1929 c. 270 s. 26.

**296.26 History:** 1899 c. 300 s. 1; Supl. 1906 s. 3519c; 1925 c. 4; Stats. 1925 s. 296.26; 1929 c. 270 s. 27.

Where a remainderman was an infant and the executors had lawfully mortgaged the property, the execution of another mortgage in order to pay off the first mortgage was promotive of the interests of the remainderman. In re Lueft, 129 W 534, 109 NW 652.

The purpose of this statute was to provide a method by which the title to property of a person under legal disability could be alienated in cases theretofore well recognized in law. It was not intended to confer on a court judicial powers additional to those theretofore exercised for the sale of interests in lands. Interests in remainder to the children of a devisee for life cannot be sold in such a way as will result in a complete separation of such interests from the life estate. In re Kingston's Estate, 130 W 560, 110 NW 417.

Ch. 300 and ch. 342, Laws 1899, do not apply to property held in trust under a will or other instrument specifically directing how it shall be administered and disposed of. *Upham v. Plankinton*, 152 W 275, 140 NW 5.

The facts stated warranted an order of sale under 296.26 and following sections. Application of Rees, 182 W 239, 196 NW 239.

**296.27 History:** 1899 c. 300 s. 2; 1899 c. 342 s. 1; Supl. 1906 s. 3519d; 1925 c. 4; Stats. 1925 s. 296.27; 1929 c. 270 s. 28; 1963 c. 6.

**296.28 History:** 1899 c. 300 s. 3; Supl. 1906 s. 3519e; 1913 c. 427; 1925 c. 4; Stats. 1925 s. 296.28; 1929 c. 270 s. 29.

An order appointing a referee under sec. 3, ch. 300, Laws 1899, is not a final order within sec. 3069, Stats. 1898. *Kingston v. Kingston*, 124 W 263, 102 NW 577.

**296.29 History:** 1899 c. 300 s. 4; Supl. 1906 s. 3519f; 1925 c. 4; Stats. 1925 s. 296.29; 1929 c. 270 s. 30.

**296.30 History:** 1899 c. 300 s. 5; Supl. 1906 s. 3519g; 1925 c. 4; Stats. 1925 s. 296.30; 1929 c. 270 s. 31.

**296.31 History:** 1899 c. 300 s. 6; Supl. 1906 s. 3519h; 1925 c. 4; Stats. 1925 s. 296.31; 1929 c. 270 s. 32.

**296.32 History:** 1899 c. 300 s. 7; Supl. 1906 s. 3519i; 1925 c. 4; Stats. 1925 s. 296.32; 1929 c. 270 s. 33.

**296.33 History:** 1899 c. 300 s. 8; Supl. 1906 s. 3519j; 1925 c. 4; Stats. 1925 s. 296.33; 1929 c. 270 s. 34.

**296.34 History:** 1899 c. 300 s. 9; Supl. 1906 s. 3519k; 1925 c. 4; Stats. 1925 s. 296.34; 1929 c. 270 s. 35.

**296.35 History:** 1899 c. 300 s. 10; Supl. 1906 s. 3519L; 1911 c. 663 s. 441; 1925 c. 4; Stats. 1925 s. 296.35; 1929 c. 270 s. 36.

**296.36 History:** 1858 c. 140 s. 1, 3, 4; R. S. 1858 p. 389 s. 1, 3, 4; R. S. 1878 s. 3520; Stats. 1898 s. 3520; 1925 c. 4; Stats. 1925 s. 296.36; 1929 c. 270 s. 37; 1941 c. 259; 1943 c. 372; 1945 c. 13; 1949 c. 71; 1959 c. 542; 1963 c. 26; 1969 c. 339 s. 27.

See note to sec. 1, art I, on exercises of police power, citing 32 Atty. Gen. 203.

**296.37 History:** 1858 c. 140 s. 3; R. S. 1858 p. 389 s. 3; R. S. 1878 s. 3522; Stats. 1898 s. 3522; 1925 c. 4; Stats. 1925 s. 296.42; 1929 c. 270 s. 43; 1947 c. 506; 1965 c. 252; 1969 c. 339; Stats. 1969 s. 296.37.

**296.50 History:** R. S. 1849 c. 64 s. 22; R. S. 1849 c. 65 s. 50; R. S. 1858 c. 93 s. 22; R. S. 1858

c. 94 ss. 60, 61; R. S. 1878 s. 3918; Stats. 1898 s. 3918; 1925 c. 4; Stats. 1925 s. 316.45; 1931 c. 51 s. 42; 1931 c. 79 s. 31; 1969 c. 339 s. 20; Stats. 1969 s. 296.50.

**Editor's Note:** This section and following sections of ch. 296 will become effective April 1, 1971, under the terms of sec. 20, ch. 339, Laws 1969.

**296.52 History:** R. S. 1849 c. 64 s. 23; R. S. 1849 c. 65 s. 52; R. S. 1858 c. 93 s. 23; R. S. 1858 c. 94 s. 62; R. S. 1878 s. 3919; Stats. 1898 s. 3919; 1925 c. 4; Stats. 1925 s. 316.46; 1931 c. 51 s. 43; 1969 c. 339 s. 20; Stats. 1969 s. 296.52.

**296.54 History:** R. S. 1849 c. 64 s. 24; R. S. 1849 c. 65 s. 53; R. S. 1858 c. 93 s. 24; R. S. 1858 c. 94 s. 63; R. S. 1878 s. 3920; Stats. 1898 s. 3920; 1925 c. 4; Stats. 1925 s. 316.48; 1931 c. 51 s. 45; 1969 c. 339 s. 20; Stats. 1969 s. 296.54.

**296.56 History:** R. S. 1849 c. 64 s. 25; R. S. 1849 c. 65 s. 54; R. S. 1858 c. 93 s. 25; R. S. 1858 c. 94 s. 64; R. S. 1878 s. 3921; Stats. 1898 s. 3921; 1925 c. 4; Stats. 1925 s. 316.49; 1931 c. 51 s. 46; 1969 c. 339 s. 20; Stats. 1969 s. 296.56.

**296.58 History:** R. S. 1849 c. 65 s. 55; R. S. 1858 c. 94 s. 65; R. S. 1878 s. 3922; Stats. 1898 s. 3922; 1925 c. 4; Stats. 1925 s. 316.50; 1931 c. 51 s. 47; 1931 c. 79 s. 32; 1969 c. 339 s. 20; Stats. 1969 s. 296.58.

## CHAPTER 297.

### Foreclosure of Mortgages by Advertisement.

**297.01 History:** R. S. 1849 c. 121 s. 1; R. S. 1858 c. 154 s. 1; R. S. 1878 s. 3523; Stats. 1898 s. 3523; 1925 c. 4; Stats. 1925 s. 297.01.

**Revisers' Note, 1898:** The limitation is suggested in analogy to the twenty-year statute of limitations in actions upon sealed instruments. It seems clear that the mortgagee should not be permitted to foreclose by advertisement after he is barred from so doing by action.

Sec. 1, ch. 154, R. S. 1858, applies to insane mortgagees. Encking v. Simmons, 28 W 272.

Where a mortgagee is about to foreclose for an amount which includes usurious interest the mortgagor may maintain an action to restrain the sale for any greater amount than is equitably due without tendering that amount. Haggerson v. Phillips, 37 W 364.

A statutory foreclosure which is void because made by a person without authority to act for a mortgagee cannot operate as an assignment of the mortgage. Hayes v. Lienlokken, 48 W 509, 4 NW 584.

The proceedings must be in substantial compliance with the statute. A sale is not affected by the fact that the statute of limitations had run upon the note secured by the mortgage. Hayes v. Frey, 54 W 503, 11 NW 695.

A mortgage and sale thereunder will not be set aside in equity, though the instrument and the proceedings are irregular or defective, except upon payment of the amount due the mortgagee. Welsh v. Blackburn, 92 W 562, 66 NW 528.

A statutory form of mortgage does not have

imported into it by sec. 2209, Stats. 1898, a power of sale so it can be foreclosed by advertisement. Dawson v. Bauch, 149 W 144, 135 NW 535.

See note to sec. 1, art. I, on inherent rights, citing De Young v. Koehler, 181 W 415, 194 NW 490.

A foreclosure by advertisement will be reviewed by the courts only to determine whether the sale was justified by default, was in strict conformity with the mortgage, and was free from fraud. A junior mortgagee, who had notice of the foreclosure and opportunity to redeem, was concluded by his failure so to do. De Young v. Koehler, 181 W 415, 194 NW 490.

Foreclosure by advertisement. Bliss, 1949 WLR 341.

**297.02 History:** R. S. 1849 c. 121 s. 2; R. S. 1858 c. 154 s. 2; R. S. 1878 s. 3524; Stats. 1898 s. 3524; 1925 c. 4; Stats. 1925 s. 297.02.

**297.03 History:** R. S. 1849 c. 121 s. 3; R. S. 1858 c. 154 s. 3; R. S. 1878 s. 3525; Stats. 1898 s. 3525; 1925 c. 4; Stats. 1925 s. 297.03.

**297.04 History:** R. S. 1849 c. 121 s. 4; R. S. 1858 c. 154 s. 4; R. S. 1878 s. 3526; Stats. 1898 s. 3526; 1899 c. 351 s. 40; Supl. 1906 s. 3526; 1907 c. 178; 1925 c. 4; Stats. 1925 s. 297.04.

**Revisers' Note, 1898:** The foregoing is written, in substance, from sections 2388, 2389, New York code. The desirability of incorporating such provisions is shown by the practice adopted in Newman v. Ogden, 82 W 53.

In the absence of bad faith on plaintiff's part the place of sale and mode of publication are left to his discretion. Maxwell v. Newton, 65 W 261, 27 NW 31.

If the notice contains all that the statute prescribes it will be sufficient. Maxwell v. Newton, 65 W 261, 27 NW 31.

The notice is good if the language used in it unmistakably implies that a sale will be made. Nau v. Brunette, 79 W 664, 48 NW 649.

**297.05 History:** R. S. 1849 c. 121 s. 5; R. S. 1858 c. 154 s. 5; R. S. 1878 s. 3527; Stats. 1898 s. 3527; 1925 c. 4; Stats. 1925 s. 297.05.

**297.06 History:** R. S. 1849 c. 121 s. 6; R. S. 1858 c. 154 s. 6; R. S. 1878 s. 3528; Stats. 1898 s. 3528; 1925 c. 4; Stats. 1925 s. 297.06.

The statute enters into and becomes a part of every mortgage containing a power of sale, and where there is a designation in the mortgage of the then sheriff such designation is subject to the statute, and a sale made by the undersheriff is good. Where the sale was adjourned from the place designated in the notice to a place less than 600 feet therefrom and in view thereof the sale was valid. Morrissey v. Dean, 97 W 302, 72 NW 873.

**297.07 History:** R. S. 1849 c. 121 s. 7; R. S. 1858 c. 154 s. 7; R. S. 1878 s. 3529; Stats. 1898 s. 3529; 1925 c. 4; Stats. 1925 s. 297.07; 1965 c. 252.

A sheriff has discretion as to whether to postpone a sale under 297.07. Hales Corners S. & L. Asso. v. Kohlmetz, 36 W (2d) 627, 154 NW (2d) 329.

**297.08 History:** R. S. 1849 c. 121 s. 8; R. S. 1858 c. 154 s. 8; R. S. 1878 s. 3530; Stats. 1898 s. 3530; 1925 c. 4; Stats. 1925 s. 297.08.